



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 29, 2022

IN THE MATTER OF:

Appeal Board No. 625770

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 625769, 625770 and 625771, the claimant appeals from the decisions of the Administrative Law Judge filed September 13, 2022, that sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 27, 2022 through May 7, 2022, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$175 in benefits recoverable pursuant to Labor Law § 597

(4); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits.

The Administrative Law Judge held a combined telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant.

In Appeal Board Nos. 625769 and 625771, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made concerning the issues of the claimant's availability for employment and willful misrepresentation. The findings of fact and the opinion of the Administrative Law Judge are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

In Appeal Board No. 625770, our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and evidence should be taken with respect to the recoverability of the benefits paid to the claimant

for the week ending March 27, 2022.

At the remand hearing, the Administrative Law Judge shall confront the claimant with the Department of Labor record which purports to document the certification she made for that week during a telephone interview with Department of Labor representative Noreen Hayden. The Judge shall question the claimant about the responses recorded on that document and shall take any additional testimony and evidence necessary to decide the case. The document should then be entered into evidence.

The claimant made produce any other relevant witnesses or documents. The judge may take any other testimony and evidence necessary to decide the case.

DECISION: In Appeal Board Nos. 625769 and 625771, the decisions of the Administrative Law Judge are affirmed.

The initial determinations, holding the claimant ineligible to receive benefits, effective March 27, 2022 through May 7, 2022, on the basis that the claimant was not available for employment; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

In Appeal Board No. 625770, the decision of the Administrative Law Judge, charging the claimant with an overpayment of \$175 in benefits recoverable pursuant to Labor Law § 597 (4), is rescinded.

Now, based on all of the foregoing, it is

ORDERED, that in Appeal Board No. 625770, the case is remanded to the Hearing Section to hold a hearing on the issue of recoverable overpayment of benefits, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER